



DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2013 Allowable Charges for Agricultural Workers' Meals and Travel Subsistence Reimbursement, Including Lodging.

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this Notice to announce (1) the allowable charges for 2013 that employers seeking H-2A workers may charge their workers when the employer provides three meals a day, and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim in 2013. The Notice also includes a reminder regarding employers' obligations with respect to overnight lodging costs as part of required subsistence.

EFFECTIVE DATE: This notice is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification (OFLC), U.S. Department of Labor, Room C-4312, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-693-3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

The United States (U.S.) Citizenship and Immigration Services of the Department of

Homeland Security will not approve an employer's petition for the admission of H-2A nonimmigrant temporary agricultural workers in the U.S. unless the petitioner has received from the Department an H-2A labor certification. The H-2A labor certification provides that: (1) there are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5).

Allowable Meal Charge

Among the minimum benefits and working conditions that the Department requires employers to offer their U.S. and H-2A workers are three meals a day or free and convenient cooking and kitchen facilities. 20 CFR 655.122(g). Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. *Id.*

The Department provides, at 20 CFR 655.173(a), the methodology for determining the maximum amounts that H-2A agricultural employers may charge their U.S. and foreign workers for providing them with three meals per day during employment. This methodology provides for annual adjustments of the previous year's maximum allowable charge based upon updated Consumer Price Index (CPI) data. The maximum charge allowed by 20 CFR 655.122(g) is adjusted by the same percentage as the 12-month percent change in the CPI for all Urban Consumers for Food (CPI-U for Food)¹. The

¹ Consumer Price Index – December 2012, published January 16, 2013 at <http://data.bls.gov/pdq/SurveyOutputServlet>

OFLC Certifying Officer may also permit an employer to charge workers a higher amount for providing them with three meals a day, if the higher amount is justified and sufficiently documented by the employer, as set forth in 20 CFR 655.173(b).

The Department has determined that the percentage change between December of 2011 and December of 2012 for the CPI-U for Food was 2.6 percent. Accordingly, the maximum allowable charge under 20 CFR 655.122(g) shall be no more than \$11.42 per day, unless the OFLC Certifying Officer approves a higher charge as authorized under 20 CFR 655.173(b).

Reimbursement for Daily Travel Subsistence

The regulations at 20 CFR 655.122(h) establish that the minimum daily travel subsistence expense for meals, for which a worker is entitled to reimbursement, must be at least as much as the employer would charge for providing the worker with three meals a day during employment (if applicable), but in no event less than the amount permitted under § 655.173(a), i.e. the charge annually adjusted by the 12-month percentage change in CPI for all Urban Consumers for food. The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department bases the maximum meals component of the daily travel subsistence expense on the standard minimum Continental United States (CONUS) per diem rate as established by the General Services Administration (GSA) at 41 CFR part 301, formerly published in Appendix A, and now found at www.gsa.gov/perdiem. The CONUS minimum meals component remains \$46.00 per day for 2013.² Workers who qualify

² Maximum Per Diem Rates for the Continental United States (CONUS), 77 FR 54578 (Sept. 5, 2012); see also www.gsa.gov/perdiem.

for travel reimbursement are entitled to reimbursement for meals up to the CONUS meal rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may provide for meal expense reimbursement, with receipts, to 75 percent of the maximum reimbursement for meals of \$34.50, as provided for in the GSA per diem schedule. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.173(a) as specified above.

The term “subsistence” includes both meals and lodging during travel to and from the worksite. Therefore, an employer is responsible for providing, paying in advance, or reimbursing a worker for the reasonable costs of transportation and daily subsistence between the employer’s worksite and the place from which the worker comes to work for the employer, if the worker completes 50 percent of the work contract period, and upon the worker completing the contract, return costs. In those instances where a worker must travel to obtain a visa so that the worker may enter the U.S. to come to work for the employer, the employer must pay for the transportation and daily subsistence costs of that part of the travel as well.

The Department interprets the regulation to require the employer to assume responsibility for the reasonable costs associated with the worker’s travel, including transportation, food, and, in those instances where it is necessary, lodging. The minimum and maximum daily travel meal reimbursement amounts are established above. If transportation and lodging are not provided by the employer, the amount an employer must pay for transportation and, where required, lodging, must be no less than (and is not required to be more than) the most economical and reasonable costs. The

employer is responsible for those costs necessary for the worker to travel to the worksite if the worker completes 50 percent of the work contract period, but is not responsible for unauthorized detours, and if the worker completes the contract, return transportation and subsistence costs, including lodging costs where necessary. This policy applies equally to instances where the worker is traveling within the U.S. to the employer's worksite.

For further information on when the employer is responsible for lodging costs, please see the Department's H-2A Frequently Asked Questions on Travel and Daily Subsistence, which may found on the OFLC website:

<http://www.foreignlaborcert.doleta.gov/>.

Signed in Washington, D.C. on this 27th day of February, 2013.

Jane Oates
Assistant Secretary,
Employment and Training Administration

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